

§ 548.302 Average earnings for period other than a workweek.

(a) Section 548.3(b) authorizes as an established basic rate: "A rate per hour which is obtained by averaging the earnings, exclusive of payments described in paragraphs (1) through (7) of section 7(e) of the act, of the employee for all work performed during the workday or any other longer period not exceeding sixteen calendar days for which such average is regularly computed under the agreement or understanding. Such a rate may be used to compute overtime compensation for all the overtime hours worked by the employee during the particular period for which the earnings average is computed."

(b)(1) The ordinary method of computing overtime under the act is at the employee's regular rate of pay, obtained by averaging his hourly earnings for each workweek. Section 548.3(b) authorizes overtime to be computed on the basis of the employee's average hourly earnings for a period longer or shorter than a workweek. It permits the payment of overtime compensation on the basis of average hourly earnings for a day, a week, two weeks or any period up to 16 calendar days, if the period is established and agreed to with the employee prior to the performance of the work.⁹ The agreement or understanding may contemplate that the basic rate will be the average hourly earnings for a day or a specified number of days within the sixteen day limit, or it may provide that the basic rate will be the average hourly earnings for the period required to complete a specified job or jobs.

Example 1. An employee is employed on a piece-work basis with overtime after 8 hours a day and on Saturday. Ordinarily his overtime compensation would be computed by averaging his earnings for the entire workweek to arrive at the regular rate of pay and then computing the overtime compensation due. Under this subsection of the regulations the employer and the employee may agree to compute overtime on the basis of the average hourly earnings for each day. Similarly, in a situation involving a bi-weekly or a semi-monthly pay period the employer may

find it convenient to compute overtime on the basis of the average hourly earnings for the bi-weekly or semi-monthly period.¹⁰

Example 2. An employee, who normally would come within the forty hour provision of section 7(a) of the Act, is paid a fixed amount of money for the completion of each job. Each job takes 2 or 3 days to complete. Under the employment agreement, the employee is entitled to time and one-half an authorized basic rate for all hours worked in excess of forty in the workweek. The authorized basic rate is the employee's average hourly earnings for each job. Suppose he completes two jobs in a particular workweek and all his overtime hours are on job No. 2. The employee's average hourly earnings on job No. 2 may be used to compute his overtime pay.

(2) In this connection it should be noted that although the basic rate is obtained by averaging earnings over a period other than a workweek the number of overtime hours under the act must be determined on a workweek basis.

(c) In computing the basic rate under § 548.3(b), the employer may exclude from the computation the payments which he could exclude in computing the "regular" rate of pay.¹¹

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§ 548.303 Average earnings for each type of work.

(a) Section 548.3(c) authorizes as an established basic rate: "A rate per hour which is obtained by averaging the earnings, exclusive of payments described in paragraphs (1) through (7) of section 7(e) of the act, of the employee for each type of work performed during each workweek, or any other longer period not exceeding sixteen calendar days, for which such average is regularly computed under the agreement or understanding. Such a rate may be used to compute overtime compensation, during the particular period for which such average is computed, for all the overtime hours worked by the employee at the type of work for which the rate is obtained."

¹⁰See § 548.301 (c) for a discussion of the method of computing overtime for an employee paid on a semi-monthly basis.

¹¹See §§ 778.200 through 778.225 of this chapter for an explanation of what payments may be excluded.

⁹Averaging over periods in excess of 16 calendar days may in appropriate cases be authorized by the Administrator under § 548.4.